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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/813,585	03/30/2004	Bertram Rupietta	RUPIETTA ET AL. - 1	4312

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WILLIAM COLLARD
COLLARD & ROE, P.C.
1077 NORTHERN BOULEVARD
ROSLYN, NY 11576

EXAMINER

DANIELS, MATTHEW J

ART UNIT	PAPER NUMBER
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1732

DATE MAILED: 07/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/813,585

Applicant(s)

RUPIETTA ET AL.

Examiner

Matthew J. Daniels

Art Unit

1732

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 07 July 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 14-17.
Claim(s) withdrawn from consideration: 1-13.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☒ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). 27 February 2006
13. ☐ Other: _____.

Continuation of 3. NOTE: The composition of the second layer and "by changing the direction of rotation" would require at least further consideration. Also see the enclosed response to arguments.

Response to Arguments

Applicant's arguments filed 7 July 2006 have been fully considered but they are not persuasive. The arguments appear to be on the following grounds:

- a) A concise explanation of the DE 154155 reference was provided with the 22 February 2006 information disclosure statement.
- b) There is no obviousness-type double patenting because the conflicting application relates to two tools, this application uses a single compacting tool, and an amendment to Claim 14 is made to clarify this aspect.
- c) Claim 14 is amended to recite an acid-resistant concrete mixture.
- d) Ottman is silent to the diameter of the compacting tool being reduced between the two steps of deposition of concrete mix.
- e) There is no teaching or suggestion that reversing the direction of rotation changes the diameter of the compacting tool.

These arguments are not persuasive for the following reasons:

- a) The Examiner has considered the concise explanation and a signed copy of the 22 February 2006 IDS is enclosed.
- b, c, e) These arguments are drawn to claim amendments that are not being entered.
- b) The Applicant's remarks are drawn to the *apparatus*, but do not appear to be drawn to the *method*. The Examiner's position is that in the method of making a concrete pipe, that multiple apparatuses that perform the same function as a single apparatus do not distinguish the two methods from each other, and on this basis the double patenting rejection is maintained. The

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Examiner's position is also that because the same method steps are performed in each application, that these methods are obvious over each other because the methods use the same process, the only differences being the number of apparatus used.

d) This claimed limitation is interpreted to be a positioning step which does not materially affect the product. In the alternative, the Examiner asserts that because Ottman's step of compacting pushes the mix radially outward, and that the mix must be fed to "re-establish the desired internal diameter" (4:32-35), that reducing the diameter between the steps would have been obvious in order to "re-establish the desired internal diameter". In the alternative, a degree of compaction occurs during the vibration step of 3:17-22 in which the radius of the tool increases with the compaction. It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention that it would be necessary to reduce the diameter before the next deposition due to this radial expansion of the tool.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew J. Daniels whose telephone number is (571) 272-2450. The examiner can normally be reached on Monday - Friday, 8:00 am - 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Johnson can be reached on (571) 272-1176. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MJD 7/24/06



CHRISTINA JOHNSON
PRIMARY EXAMINER
7/24/06